

AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY

MINUTES OF A PUBLIC HEARING

DATEAugust 28, 2002
TIME.....7:00 P.M.
PLACECO. OFFICE BLDG.
20 N. 3RD STREET
LAFAYETTE IN 47901

MEMBERS PRESENT

Mark Hermodson
Ralph Webb
Ed Weast
Steve Clevenger
Jean Hall
Bruce Junius
Miriam Osborn

STAFF PRESENT

James Hawley
Sallie Fahey
Krista Trout
Robert Mucker, Atty.
Joanna Grama, Atty.
Julie Holder
Michelle D'Andrea

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 28th day of August 2002, at 7:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Mark Hermodson called the meeting to order.

I. APPROVAL OF MINUTES

Miriam Osborn moved to approve the minutes of the June 26, 2002 public hearing. Edward J. Weast seconded and the motion was carried by voice vote.

II. NEW BUSINESS

Sallie Fahey informed the Board that **BZA-1616—WEST LAFAYETTE COMMUNITY SCHOOL CORPORATION; BZA-1617—VINTAGE APARTMENTS, LLC; BZA-1622—CROWN COMMUNICATION, INC and BZA-1623—DAMIR URMEYEV** had been requested for continuance by the petitioners and in the case of BZA-1623 because letters to interested parties had not been sent, to the September 25, 2002 meeting.

Miriam Osborn moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the Bylaws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation

on the application to be heard this evening, and responses from the checkpoint agencies. Edward J. Weast seconded and the motion carried by voice vote.

Miriam Osborn moved to continue **BZA-1616—WEST LAFAYETTE COMMUNITY SCHOOL CORPORATION; BZA-1617—VINTAGE APARTMENTS, LLC; BZA-1622—CROWN COMMUNICATION, INC** and **BZA-1623—DAMIR URMEYEV** to the September 25, 2002 Area Board of Zoning Appeals Public Meeting. Edward J. Weast seconded and the motion carried by voice vote.

III. PUBLIC HEARING

Mark Hermodson read the meeting procedures.

1. **BZA-1618—FROSTY MANAGEMENT, INC.:** Petitioner is seeking a special exception to allow a restaurant to have drive-thru service in the NB zone on property located at 1400 Teal Rd., in the City of Lafayette, Fairfield 33(NE)23-4. (UZO 3-2)

Miriam Osborn moved to hear and vote on the above-described request. Edward J. Weast seconded.

Sallie Fahey presented slides of the zoning map; aerial photograph and site plan along with 4 photographs. She read staff comments along with a recommendation for approval.

Dan Teder, representing the petitioner, P.O. Box 280 Lafayette, IN 47902, stated Jeff Schwartz, one of the owners was present and willing to answer any questions. He reiterated that the property was zoned NB and surrounding property was also zoned NB. He said that they were over the required amount of parking spaces. He concurred with staff's report and asked for approval.

Richard Lodde, 15 Braland Court, Lafayette, IN, informed the Board that he was the owner of the property. He gave a brief history of the property. He encouraged the approval of the variance.

Ralph Webb asked what the plans were for the existing Wendy's restaurant, and if the existing location had a drive through.

Dan Teder replied that plans for the existing site were not known at this time because his client does not own the property. He stated that the existing site does have a drive through.

The Board voted by ballot 7 to grant –0 to deny approving the request in **BZA-1618—FROSTY MANAGEMENT, INC.**

2. **BZA-1619—CINDY GREEN:** Petitioner is seeking a 21' setback
from the right-of-way of Hillside Dr. instead of the required 25' to

4112 complete a roofed deck on the front of the house located at
 18(NE)22-4. Hillside Dr. in Prairie Oaks Subdivision, Phase 1, Wea
 (UZO 4-2-2).

Miriam Osborn moved to hear and vote on the above-described request. Edward J. Weast seconded.

Sallie Fahey presented slides of the zoning map; aerial photograph and site plan along with 2 photographs. She read staff comments with recommendation for denial.

Sallie Fahey read letter into record from Senator Ronald J. Alting, asking for approval.

Cindy Green, 4112 Hillside Drive, Lafayette, IN, stated that when the deck was started she was not aware that a permit was needed. She gave a history of the acquiring the permit. She thanked the Board of Zoning Appeals staff and the Building Commissioner for being helpful during this process. She presented to the Board pictures and a petition in favor of the request.

Steve Gephart, 4108 Hillside Drive, Lafayette, IN, spoke in favor of the request. He stated that the deck would only increase the value of both of their homes.

Bruce Junius asked for interpretation of pictures that Cindy Green presented.

Cindy Green explained that the pictures were of different stages of construction on her property. She said that included were pictures of similar constructions in her neighborhood.

Jean Hall asked if a contractor had been hired to do this work.

Cindy Green replied family and friends, in the construction business, have been building the deck, but that a construction company had not been hired.

The Board voted by ballot 7 to grant – 0 to deny approving the request in **BZA-1619—CINDY GREEN.**

3. BZA-1620—WILDCAT WILDLIFE CENTER, INC.:

Petitioner is requesting the following six variances to seek a special exception in BZA-1621 to allow an animal shelter in the Agricultural Wooded zone:

1. To allow a front setback of 28' instead of the required 200' (UZO 4-11-(b)(3));
2. To allow a rear setback of 3' instead of the required 200';

3. To allow a side setback from the east property line of 4' instead of the required 200';
 4. To allow a side setback from the west property line of 6' instead of the required 200';
 5. To allow a lot size of 1.167 acres instead of the required 5 acres (UZO 4-11-3(b)(1)); and
 6. To allow the buildings on the property to not be temperature controlled and mechanically ventilated as required in the ordinance (UZO 4-11-3(b)(2));
- on property located at 5508 Eisenhower Rd., Perry 18(NW)23-3.

4. BZA-1621—WILDCAT WILDLIFE CENTER, INC.:

Petitioner is seeking a special exception to allow an animal shelter (SIC 0752) operating seven days a week, 24 hours a day in the Agricultural Wooded zone on property located at 5508 Eisenhower Dr., Perry 18(NW)23-3. (UZO 3-2)

Miriam Osborn moved to hear and vote on the above-described requests. Edward J. Weast seconded.

Krista Trout presented the revised site plan, slides of the zoning map, aerial photograph and site plan along with 7 photographs. She read staff comments along with a recommendation for denial of requests 1-5 and approval of request 6. She then read the staff comments for the special exception, with recommendation for denial.

Sallie Fahey asked the Board for advice on how to present the following letters into record. She informed the Board that petitioner's legal counsel submitted 12 letters from general supporters, 4 from customer supporters, 3 from education supporters, 12 from volunteer supporters, 1 from a Trustee of the McAllister Foundation, which has provided funding, 1 from Environmental Protection Staff Specialist of DNR and 1 from Fred Kohler. In addition Area Plan has directly received 1 letter in support from a volunteer and 2 letters in opposition.

Robert Mucker stated that the letters that are included in legal counsel's packet should not be read. He said that letters that Area Plan received directly should be read into record.

James Hawley asked for clarification on whether or not the authors of these letters would be allowed to speak.

Robert Mucker stated no, submitting a letter is the same as speaking, and these authors could not speak during the meeting.

Sallie Fahey read into record the following letters:

Andrea Quigley, 515 North Grant Street, Apt 8, Lafayette, IN, in support of the request.

Samuel Brown, 9020 Grant Street, Lafayette, IN, in opposition of the request.

John Thompson, submitted pictures and diagram in addition to this letter of opposition.

Marianne Owen, representing the petitioner, P.O. Box 1010, Lafayette, IN, 47902, presented packet of information, including 32 letters, to the Board. She indicated the Wildcat Wildlife center is a rehabilitation center. This property is located very near to an agriculture area, and the floodplain. She pointed out the great amount of supporters in the room. She stated that she has asked only five supporters to speak tonight, and to keep their comments short. She briefed the Board on the topics the speakers would address. She expressed that her most important point is; as comprehensive, detailed and great the new zoning ordinance is, it still has holes. She stated that this ordinance lumps the Center in with shelters and dog pounds, when in actuality this is a hospital or rehabilitation center. The setbacks, ventilation, temperature control and size of land requirements in this ordinance should not be applicable because this is not a shelter or pound. She pointed out that these are wild animals and therefore a temperature-controlled environment would be harmful since they are not used to that. Even though approximately 1600 animals come into the shelter each year, only about half of those do not make it past the first couple of hours after arrival. The size and location of this land is necessary and advantageous to its purpose. She asked for approval on the variances and the special exception and briefed the Board on the packet that was handed out.

Carol Blacketer, Director of Wildcat Wildlife Center, 5508 Eisenhower Road, Lafayette, IN 47905, stated the Center has been in operation for 8 years in the same location, under permits from the DNR. The Center is licensed for the rehabilitation of birds, mammals, and reptiles. She stated that the Center has never and will never be open to the public. The state of Indiana has issued special educational permits to the Center. She said that the Center accepts sick, injured and orphaned wildlife indigenous to Indiana. She pointed out the great need in this area for the Center. She presented to the Board a petition with 986 signatures in support of the requests. She briefed the Board on the numerous awards and nominations the Center has received over the past eight years. In addition to tending to immediate medical needs of animals, they also handle conflict resolution calls and see abuse cases. She presented pictures of recent cases to the Board.

Mark Hermodson informed Carol Blacketer that she must address the Board, not the audience, and she had 30 seconds left to speak.

Carol Blacketer continued to review pictures she had presented. She recapped the list of calls the center has received and attended to in the last 24 hours. She then added that all workers are volunteers and not tax supported. She asked for approval of the requests and stated the Center's willingness to work with the Board.

Denise Hayes 2030 East 600 North, West Lafayette, IN, gave examples of calls the Center receives. She reviewed the training program that all volunteers must go through. She explained the record keeping and case processing of each animal. All records and cases are reported to the DNR and US Fish and Wildlife Service. She stated that all release sites are pre-approved, privately owned property whose owners have granted permission for animals to be there. Volunteers are required to attend seminars on an annual basis. These workshops are attended on personal time at personal expense, to ensure training is up to date. She said that all of these programs are free of charge to the taxpayers. She reviewed the community education the Center provides and pointed out the benefits the community has already received. She mentioned that the location is key to the community, volunteers and animals. She stated that the location is a safe, quiet, natural habitat for the animals to heal. She reiterated that the Center is entirely funded by private donations at no cost to the taxpayers. Due to the nature of the funding, moving the Center would lead to it's demise. She asked for approval for the variance and asked all supporters in the room to stand.

Members of the audience stood.

Dr. Julia Becker, 1100 Sarasota Drive, Lafayette, IN, stated she was one of many veterinarians who volunteer at the Center. She said that not only do the animals reap the benefits of the Center, but so do the people of this community. Local hospitals and veterinary clinics donate supplies and equipment. She mentioned that the veterinary professionals and volunteers do whatever it takes to ensure the good health of the animals. She stated that this is definitely a hospital and not a shelter. She explained that most veterinarians are not trained or prepared to care for wildlife. She stated that the vaccination work the clinic performs helps protect domesticated animals and humans.

Dawn Bowser, 522 South 16th Street, Lafayette, IN, stated she works for the Tippecanoe County Animal Control Department. She said that Animal Control receives 20-30 calls a day and adding wildlife calls would be very stressful to the Department. She expressed her support of the Center's ability to bring the veterinarians, public and community service workers together, at a higher education level.

Diane Packett, 1928 Indian Trail Drive, West Lafayette, stated she is a board member of the Sycamore Autobon Society. She said that the Society has approximately 500 members, and they support the Center, in it's current location. She pointed out that native habitats have decreased due to human expansion. She gave examples of animals that have been injured due to human contact. She said that 65% of animals brought to the Center were birds. She mentioned that all animals are brought to the Center by members of the community, the staff does not collect them. She said that veterinarians, the Humane Society, Zoo's and Animal Control all refer community members to the Center. She expressed her belief that the Board was not voting on a zoning law, but voting on if the Center was going to continue to exist. She said it is not as simple as moving it to a new location, and the

Center only exists because it is located on the director's property. She informed the Board that there was no money to move the Center, and denying the variances would force it to shut down. She stated that if the variances were granted the staff of the Center would work with the Board and Area Plan staff to fix all problems and violations. She asked for approval based on the fact that the Center has operated since 1995 without incident or complaint.

Nate Brooks, 1408 East 600 North, West Lafayette, IN, expressed his belief that the Center should stay open. He said that without the Center there would not be as many animals to look at. He stated that if the Center closed, it would greatly affect his future. He said he hopes to be a veterinarian and to volunteer there when he is old enough. He mentioned that animals would die if the Center closes. He asked if anyone realized that the Center affects the animals, his family and his future. He asked all supporters of the Center to stand.

Chuck Wise, 2509 Kickaboo Drive, Lafayette, IN, stated he is the current president of the Wildcat Creek Foundation. He asked for approval of the variances. He suggested traffic restrictions and 20 mile per hour signs as a solution to the traffic and parking problems. He stated that this is a unique facility. He expressed his concern that denying the variances would hurt more people that it will help. He said he still has faith in local government and asked for approval.

Rod Evans, 4001 Silvan Trail, West Lafayette, IN, stated that he is a board member of a local land trust, which has been able to preserve 1000 acres of natural area. He said that his board and membership support the Center.

Ron Wallace, 3519 East 200 North, Lafayette, IN, 47905, stressed that he is not against the Center or it's purpose. He said he questioned whether this residence was the proper place to do this. He explained that with the right-of-way and flood plain there is not a lot of property left. He stated that all the structures, utility, and parking requirements needed on a small piece of property, put a safety and welfare hazard on adjoining properties. He said these hazards are due to the smell, odor, traffic and large number of employees working there. He mentioned that the reason the UZO requires 5 acres for this type of use is to protect the adjoining property owners. He said in addition to cars parking in the right-of-way, dumpsters in the right-of-way, and water running off the cages into the county ditch, another concern is the raccoons that are released and destroying neighbors' property and killing their animals. He referenced a letter from the Tippecanoe County Health Department dated August 22, 2002, which stated pans and cages were constructed in an unsanitary manner. He reviewed other points in the letter, which indicated many health code violations, and changes needed. He expressed his opinion that the proposed variance of reduction in setbacks was drastic and unfair to adjoining property owners. He informed the Board that there is currently a property dispute of 11 feet on the west side of the property. He pointed out on the new site plan that four of the proposed parking spots fall onto this disputed land. He questioned what would happen to the four spots if Carol Blacketer loses the dispute. He reiterated his opposition to the variances because of the following reasons: unsanitary

conditions stated in the letter from Tippecanoe County Health Department; odor; increase of traffic; and damage released animals have done. He agreed with Area Plan staff's report and stated his belief that they know what is best for the community. He asked for denial. He reiterated that he is not against the Center, but only where it is located.

Michael Scott Van Meeter, 5436 Eisenhower Road, Lafayette, IN, stated that he is the immediate neighbor to the Center. He expressed his belief that this is not a proper setting for a facility of this nature. He said he is not here against them, only against the location. He mentioned one safety concern of animals being dropped off at his residence in error. He stated that he has had a child bitten, and that makes it difficult for his family to sit outside without fear of being bitten. He expressed concern for his family's quality of life, and the daily precautions he has to take. He said that animal's have rights, but so do the residents that live around the Center. He said that this was the wrong setting for this facility.

Barbara Thompson, 5404 Eisenhower Road, owns adjoining property, presented pictures to the Board. She stated that she is in dispute with Carol Blacketer over 11 feet of bordering land. She expressed her opinion that the disputed property should not be a part of the Center's site plan until the dispute is settled. She said it is injurious to public health safety and general welfare because there is no separation between the Center and the adjacent properties. She mentioned that pens have been built on her fence posts and there is nothing to keep the animals from leaving that property when they escape. She suggested that the entire property be required to be fenced in. She mentioned health concerns from the smells and water supply. She stated that the lot was not big enough and moving the cages inward would not alleviate the problem. She pointed out on the site map that there are several new developments going up on the properties in back of the Center. She stated her desire that the current zoning be maintained, the variances be denied and the waste disposal be taken care of. She reiterated that she is not against the Center, but against the location and size. She informed the Board that when Carol Blacketer first started out, she tried to help. She stated she had donated cages, allowed her space for parking, allowed her space for enlarged deer pens and gave her apples from their yard. She asked for denial and presented map to the Board.

Rueben Pribble, 21 Drawbridge Court, Lafayette, IN, commended the Center for providing a valuable service to the native wildlife and the greater Lafayette community. He informed the Board that he has used the Center several times to deliver animals. He expressed his hope that a solution can be found that will allow the Center to continue and to expand. He stated he is a property owner and is concerned that the County continues to enforce the zoning ordinances. He expressed his faith in the Zoning ordinance and his opposition to altering them. He stated he was unaware that the Center was in violation. He said that granting these variances would devalue the adjacent properties and the neighbors' homes. He pointed out that devaluing the neighbors' homes would penalize them for violations already perpetrated by the Center. He said that the ravine behind the Center runs into Wildcat Creek. He stated that he has seen animal waste dumped over the

ravine into the creek. He presented pictures showing the ravine littered with piles of straw, wood chips and animal waste. He mentioned that run off from the cages also runs into the ravine. The pictures also showed soiled animal bedding on the side of the road. He pointed out the dumpsters in the pictures. He stated that the odor from the dumpster is an assault on the senses. He suggested that the smell might indicate animal remains in addition to waste. He referenced the new site map and pointed out additional cages that would put further strain on the property. He said the reason the ordinance requires 5 acres for this type of facility is not only to protect the neighbors, but also to allow for expansion if necessary. He suggested, with the amount of support shown at the meeting, a relocation and fundraising campaign could be a successful solution. He gave an example of land for sale that was advertised in the Journal and Courier. He offered a plan using the 1000 names on the petition to raise \$100,000 to buy land, buildings and pens. He stated this does not have to be a do or die situation. He suggested the Board allow the Center to continue without expansion for one year, at which time it should be shown that significant progress has been made to purchase land for relocation. He posed three questions to the Board: Is this the proper place for the Center? Where do the 800 dead animals go? and Can dumpsters be located on a flood plain as the site plan indicates?

Marianne Owen reiterated that the ordinance was written for a dog pound, not for small wild animals, including birds. She stated that these animals do not create a lot of excrement. She said that the smells that come from the Center are consistent with an agriculture and wooded area, as is the noise. She claimed that many of the people who have spoken are blaming the Center for the natural habitat they have chosen to live in. She stated that the Center is in the business of helping animals, not putting them at risk. She said that having the Center in another location would put them at risk and be in conflict with their intentions. She presented color pictures of the pens, and explained they were there to protect the animals inside and out. She reiterated that animals are not released on this site, but taken to other sites. She said the waste is carefully taken care of. She stated that the concerns from the Department of Health, the parking, dumpster and boundary issues are all in the process of being resolved, and upon approval will be resolved. She stated that investing in those improvements without approval would not be the best use of the Center's funds. She pointed out on the map that the immediate surrounding area is flood plain and would not be developed. She said that the Center really does not want to expand. They would rather expand education, so the community can learn how to rescue and rehabilitate wild animals. She stated they did not want a larger property, they just want to stay where they are. She asked the Board for approval.

Jean Hall asked staff to re-look at the aerial view. He asked staff if there were any options for temporary operation if the variances were denied.

Sallie Fahey replied that denial of any one of the variances would not allow approval of the special exception because the property cannot comply without variance. She stated that there are not any provisions in the zoning to allow a temporary operation.

Jean Hall asked if this does not pass, do they have to be completely shut down by midnight tonight.

James Hawley expressed his belief that the Board could grant time for the removal and relocation of the animals. He stated that usually in an enforcement action, the enforcement officer would allow time for things to be straightened out. He said the Board could probably do that and then deferred to Mr. Mucker.

Robert Mucker stated that if the Board decided that they did not want to see this enforced for a specified period of time, and if the zoning officer cited no violation, they would have to require it to come back to the Board. He clarified that they could say no violation was found at this time, but come back in 6 months.

Jean Hall clarified that the Board would have to require them to go through the BZA, so that they could allow a reasonable amount of time to get things straightened out.

Miriam Osborn agreed that could be done since there were no other options.

Bruce Junius commented that this procedure is not clear, and there has to be a way to accomplish what Jean Hall has suggested.

James Hawley suggested there is a 30-day period to appeal actions of this Board, which would delay the enforcement.

Mark Hermodson stated that there needs to be a reasonable time allowed, and that should come from this Board, in order to monitor the service. He also commented he is not in favor of using the appeals process.

James Hawley clarified the appeals process is a permissive time, and not something they are required to do.

Jean Hall asked if it was possible to grant temporary variances.

Several members replied no.

Robert Mucker replied no. He stated that violations are brought by the BZA and ultimately the Board is in control.

Sallie Fahey showed aerial photos.

Jean Hall pointed out areas on the map and asked if they were likely to be developed.

Sallie Fahey stated there are several parcelization developments already in progress on both sides of this property.

Jean Hall stated that he agreed with several of the opposing speakers who stated they believed in the operation of the Center. He stated he is not interested in getting rid of this service. He stated that there is an issue of the appropriate size of the property. He expressed his hope that the county and its citizens could work together to find a solution. He suggested that the county provide a suitable location and mentioned the possibility of Ross Hills or the Amphitheater property. He reiterated his hope that the county could work with the Center to find a solution, regardless of how the vote goes. He stated that he did not think it was necessary to try to raise \$100,000, when the county already owns suitable property. He challenged the county to see what could be done.

Mark Hermodson agreed that the cause was wonderful and desperately needed. He stated that this was a wholly inadequate site and more space was desperately needed. He confirmed that the property is in the middle of areas being developed. He agreed with Jean Hall that the county should be assisting in finding a solution. He said he is not opposed to tax money going to a cause such as this. He stated this cause is deserving of the same funding that household pets receive. He reiterated that he couldn't support the petition because the site is inadequate. He expressed his hope for a delay in order to find an adequate site. He said he understood that it is not a noise issue, but an issue of health and animal separation. He stated he could not support the petition, but certainly supported the cause.

Jean Hall asked if a motion could be made to put the decision off in order to look for other options.

Robert Mucker stated that it would have to go to next meeting and be taken off the table at that time.

Miriam Osborn clarified that if it were not voted on next meeting, it would have to be resubmitted.

Ralph Webb stated continuances could be granted beyond one month.

Jean Hall stated there is a difference between a continuance and simply tabling it.

Mark Hermodson stated he would rather have council advise on options available for delay of enforcement. He said he would rather vote on the issue tonight because the petition refers to one site only. He said that he did not see the point in delaying the vote.

Robert Mucker stated that this case is only filed because the Board has said it could be filed. He said that right now this case is in the name of the BZA. If the Board so desires, they can name one individual to decide what is a lawsuit and what isn't. He said that this would cause every case to come before the Board.

Several Board members expressed their lack of understanding Robert Mucker's suggestion.

Robert Mucker explained that the Board would have to direct the attorneys to obtain authority from the Board before filing a lawsuit. He stated the option was for the Board to designate an individual to grant the authority on behalf of the Board.

Miriam Osborn asked if that would apply to only this case.

Robert Mucker replied no, it would have to be for all cases.

Several Board members expressed their dislike of that option.

Mark Hermodson suggested delaying this discussion until after the vote. He asked if there were further issues to address in regard to the vote.

Miriam Osborn said this was an excellent program. She agreed with the other Board members that the grounds were too small. She said her biggest concern came from Marianne Owen's rebuttal. She said that the people who spoke in opposition, had some valid concerns. She referenced Marianne Owen's comments that it was not in the best use of the Center's funds to remove waste. She said that comment bothered her. She stated it is important, no matter how this continues, that the waste removal happens. The dumpsters need to be emptied on a regular basis, and cannot be over flowing. She instructed Marianne Owen to wait to speak.

Marianne Owen asked if she could clarify her earlier statements because there was a misunderstanding.

Robert Mucker told her to wait.

Miriam Osborn stated concern for pictures seen and comments made indicating that plumbing and other repairs would not be done until there is a verdict on the variances. She referenced the letter from Tippecanoe County Health Department, which brings up several sanitary problems. She mentioned another comment from Marianne Owen regarding the Center's opposition to expansion, and referenced the new site plan showing nothing but expansion. She stated that there is a lot of confusion on what is really going to happen and how this will be continued even if denied. She said she wanted to find a way to allow time to find a solution so they can maintain operation. She reiterated that this was a great program for the community, but not the right location, especially since developments are going up all around it. She agreed with Rueben Pribble, who spoke in opposition, that the adjacent owners have the same exact property rights that Carol Blacketer has. She said the neighbors are being encroached upon, and the Board sits for everybody. She reminded the Board that if the variances pass, they would apply to that property forever.

Bruce Junius concurred 100% with Miriam Osborn.

Ralph Webb stated the special exception was for an animal shelter, and several speakers referred to the Center as a hospital. He asked staff if the ordinance differentiated between a shelter and hospital.

Sallie Fahey stated both required special exceptions in AW zones.

Ralph Webb clarified that they could have petitioned for a special exception for an animal hospital.

Sallie Fahey replied that might have been a possibility. She said at the time of discussion, all parties agreed it was more like a shelter than a hospital. She stated that a hospital would have a different physical plant. She said it was a toss up and either way would require a special exception.

Ralph Webb asked staff if there was anything in the ordinance that differentiated between wild and domesticated animals.

Sallie Fahey stated that there might be some difference between large animals, like horses and cattle, and all other animals. She said she did not think a distinction between wild and domesticated has been made regarding an animal shelter.

Ralph Webb said he has to vote on an exception dealing with wild animals.

Robert Mucker explained that staff was pointing to a category that was for other animals rather than horses.

Mark Hermodson clarified that there are horses and then everything else.

Robert Mucker stated the category was by size and there is no distinction between domesticated and wild.

Steve Clevenger asked staff if the Center would have the same setback requirements if it were classified as a hospital instead of a shelter.

Sallie Fahey requested a minute to look that up.

Jean Hall reiterated that this is a good thing, in a bad location. He stated that wild life rehabilitation belongs in a park environment and not in the middle of a residential area or an area under development. He remarked he would be willing to address the County Commissioners about the possibility of providing space on county property. He referred to Rod Evan's earlier comments regarding his organization's accomplishment of preserving 1000 acres of land. He suggested going through DNR to obtain a few of those acres.

Sallie Fahey stated according to the use table, veterinariary services have two categories, one for livestock and one for animal specialties. She informed the Board that Krista went to retrieve the SIC book in order to define animal specialties.

She cited a special condition referring to rural areas where the boarding of animals is permitted. The next section listed kennels, shelters, and all other animal specialties except veterinarian.

Marianne Owen interjected that this determination for filing the petition was made previously by her and staff jointly.

Sallie Fahey cited section 0752, of the SIC book on animal specialties service except veterinarian, which included many of the services the Center provides.

Mark Hermodson clarified that it is all covered under other.

Marianne Owen asked to address the Board. She declared that the Center was not disregarding waste disposal or the importance of it, because they are a hospital. She explained her earlier comment meant, to put in the investment of permanent improvements, without the ability to maintain the Center on this site, would not be a wise expenditure of funds.

Miriam Osborn claimed she understood that reasoning for any additional large expenses. She asked for clarification that they would take care of the small things that could be repaired with volunteer help.

Marianne Owen interjected that they vary in size.

Miriam Osborn stated that if the Board can find a way to keep the Center open during the time it takes to relocate, then she hopes for the Center to have the same cooperation in addressing the health concerns. She mentioned the waste running off into the creek as an immediate need.

Marianne Owen interjected that was one of the things that has been addressed.

Miriam Osborn stated she is going by the reports she has in front of her from Tippecanoe County Health Department.

Marianne Owen stated that regrettably there was not an updated report, but those items have been resolved and addressed between receipt of the letter and the time of this meeting.

Ralph Web asked for clarification on what to vote on.

Sallie Fahey stated the Board should vote on one variance at a time. If the first one passes, they go to the next. If any variance is denied, the development standards for the special exception cannot be met.

The Board voted by ballot 0 to grant –7 to deny, denying the first request in **BZA-1620—WILDCAT WILDLIFE CENTER, INC.**

Robert Mucker restated the Center could appeal in general, or could appeal with the idea they need time to do something else.

Mark Hermodson asked if those options would bring it back to the BZA.

Robert Mucker stated it should be required to come back to the BZA.

Miriam Osborn asked if that was the best way to handle it. She inquired about the other option that she did not understand.

Robert Mucker explained that to avoid the impression that special procedure applies just to this one case, one person could be appointed to instruct the attorney on how to proceed.

Miriam Osborn asked if there was a problem in making it just for this case.

Jean Hall expressed his willingness to make it just for this case. He stated this was a special case.

Miriam Osborn recapped the plan to give them some time before enforcement.

Robert Mucker stated the Board should receive a letter of intent from the petitioner within the next two weeks.

Jean Hall clarified that since the variance was denied, the case is closed, and cannot be brought back for a year.

James Hawley inquired if it would be proper to complete this case now and finish all the votes.

Robert Mucker replied no, because it would set a precedent.

Mark Hermodson stated that he would like the Board to find some way within the legal boundary to allow them a certain amount of time before enforcement.

Robert Mucker suggested the Center contact him within the next two weeks with an idea of intent. He stated at the next meeting they could advise the Board on the status of intent.

Marianne Owen asked if they were going to vote on the special exception, or simply dismiss it. She stated without that vote, it would be difficult to raise the issue.

Several Board members replied that they could not vote on it because the first variance was denied.

Mark Hermodson stated the special exception was moot.

Marianne Owen requested that the record show that no vote was taken.

Mark Hermodson clarified that Robert Mucker was going to work with the Center in the next couple of weeks to create a game plan to present to the Board at the next BZA meeting.

Ralph Webb agreed with that plan. He stated that it is not within the Board's jurisdiction to instruct on how to enforce.

Mark Hermodson replied it is in Robert Mucker's hands.

Ralph Webb stated the Board couldn't ignore a violation. He said if the Board is aware of one they should pursue it without delay.

Mark Hermodson replied that was the reason they wanted a report next month.

Jean Hall reiterated the importance of setting a date, and asked for clarification and that the Center had to contact Robert Mucker within two weeks.

Robert Mucker stated yes, he wants Marianne Owen to contact him.

Jean Hall recapped that they would review it at the next BZA meeting.

Several Board members expressed their agreement.

IV. ADMINISTRATIVE MATTERS

Sallie Fahey asked if something needed to be done, in regard to Marianne Owen's request that the record show the special exception was not voted on.

Robert Mucker stated that would be handled, through his meeting with Marianne Owen.

V. ADJOURNMENT

Miriam Osborn moved to adjourn the meeting. Bruce Junius seconded and the motion carried by voice vote.

The meeting adjourned at 9:55 P.M.

Respectfully submitted,



Michelle D'Andrea
Recording Secretary

Reviewed by,

Sallie Fahey
Assistant Director